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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,698	12/05/2003	Virginia Tarpinian	2595U.001	4597
21917	7590	10/06/2005	EXAMINER	
MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			WILLIAMS, MARK A	
			ART UNIT	PAPER NUMBER
			3676	

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

HC

# Office Action Summary

Application No.

10/729,698

Applicant(s)

TARPINIAN ET AL.

Examiner

Mark A. Williams

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 7/19/05.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,2,7,10,12-16 and 18-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7,10,12-16 and 18-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 7, 10, 12, 14, 16, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley, US Patent 4,754,379, in view of Kreutzer, US Patent 4,402,542, and in further view of Delorenzo, US Patent 6,415,732. Kelley teaches the general concept of a device for strapping a handle to an object of a cylindrical shape, such a piling (or post). Kelley teaches each of the claimed limitations except for (1) a base member constructed of flexible material, and (2) the handle including a photo luminescent material, as claimed.

Regarding (1), Kreutzer teaches the concept of a base member 2 meeting the claimed limitations, for the purpose of providing a snug fit retention of a strapped object. It would have been obvious at the time the invention was made for one skilled in the art of have included in the design of Kelley such a modification, for

the purpose of providing a snug fit retention of a strapped object. The claimed method is inherent to the design.

Regarding (2), Delorenzo teaches the concept of a handle rail of photo luminescent material (an light stick 20), for the purpose of being visible in the dark. It would have been obvious at the time the invention was made for one skilled in the art to include such a modification in the device of Kelley, similarly to that taught in Delorenzo, for the purpose of allowing the handle to be visible in the dark.

3. Claims 2, 13, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley in view of Kreutzer in further view of Uccellini, US Patent 4,226,349. The combination does not explicitly teach wood engaging means as claimed. Such means for engaging wood are well known in the art for prevention of slippage. Uccellini teaches this concept. It would have been obvious at the invention was made for one skilled in the art to have included such a modification in the design of the combination, for the purpose of preventing slippage.

4. Claim 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelley in view of Kreutzer. The combination does not explicitly teach the handle and the base member being of wood material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have done this, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331. Such a modification is not critical to the design and would have produced no unexpected results.

4. Claims 1; 7, 10, 12, 14, and 16, 18, 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele, US Patent 6,840,186, in view of Kreutzer, US Patent 4,402,542, and in further view of Delorenzo, US Patent 6,415,732. Steele teaches the general concept of a device for strapping a handle to an object of a cylindrical shape, such a piling (or post). Steele teaches each of the claimed limitations except for (1) a base member constructed of flexible material, and (2) the handle including a photo luminescent material, as claimed.

Regarding (1), Kreutzer teaches the concept of a base member 2 meeting the claimed limitations, for the purpose of providing a snug fit retention of a strapped object. It would have been obvious at the time the invention was made for one skilled in the art of have included in the design of Steele such a modification, for the purpose of providing a snug fit retention of a strapped object. The claimed method is inherent to the design.

Regarding (2), Delorenzo teaches the concept of a handle rail of photo luminescent material (an light stick 20), for the purpose of being visible in the dark. It would have been obvious at the time the invention was made for one skilled in the art to include such a modification in the device of Steele, similarly to that taught in Delorenzo, for the purpose of allowing the handle to be visible in the dark.

5. Claims 2, 13, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele in view of Kreutzer in further view of Uccellini, US Patent 4,226,349. The combination does not explicitly teach wood engaging means as claimed. Such means for engaging wood are well known in the art for prevention of slippage. Uccellini teaches this concept. It would have been obvious at the invention was made for one skilled in the art to have included such a

modification in the design of the combination, for the purpose of preventing slippage.

4. Claim 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steele in view of Kreutzer. The combination does not explicitly teach the handle and the base member being of wood material. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have done this, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. See also *Ballas Liquidating Co. v. Allied industries of Kansas, Inc.* (DC Kans) 205 USPQ 331. Such a modification is not critical to the design and would have produced no unexpected results.

#### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 2, 7, 10, 12-16, and 18-21 have been considered but are not persuasive.

Applicant argues that there is no motivation to combine the applied art, and

even if there were motivation, the combination would not teach the claimed invention being applied to a piling. It is still believed that one skilled in the art would find it obvious to modify the base reference of Kelley in the manner claimed, for the purposes as cited in the above rejections. Regarding the use of the device on a piling, such a statement constitutes intended use and does not structurally limit the invention. The piling is not considered part of the claimed invention. However, the combination would meet this claimed functional requirement by it merely being capable of such use, which would be the case.

### ***Conclusion***

This action is non-final.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Williams whose telephone number is (571) 272-7064. The examiner can normally be reached on Monday through Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mark Williams  
9/28/05



Suzanne Dino Barrett  
Primary Examiner